



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL,
ATTORNEY GENERAL

February 3, 1977

The Honorable Jesse James
State Treasurer
P. O. Box 12608, Capitol Station
Austin, Texas 78711

Opinion No. H-937

Re: List of remittances
submitted by heads of
State agencies to the
State Treasurer.

Dear Mr. James:

You ask several questions concerning the meaning and effect of certain provisions of article 4388, V.T.C.S., which generally prescribes the procedure for handling money remitted to State agencies when the agencies have not yet determined the proper fund of the State Treasury into which the remittance should be deposited. Article 4388 provides in relevant part:

The State Treasurer shall receive daily from the head of each Department, each of whom is specifically charged with the duty of making same daily, a detailed list of all persons remitting money the status of which is undetermined or which is awaiting the time when it can finally be taken into the Treasury, together with the actual remittances which the Treasurer shall cash and place in his vaults or in legally authorized depository banks, if the necessity arises (Emphasis added).

You indicate that recently at least one agency has begun submitting microfilm copies of the actual checks or drafts constituting the individual remittances instead of a separate register that contains certain information extracted from each. You further indicate that these microfilm copies do not contain all of the information you consider necessary for your records and otherwise are not suitable for your

purposes. In this regard you specifically inquire whether these microfilm copies qualify as the "detailed list" prescribed in article 4388, whether you may require that the list submitted under 4388 include certain information, and whether you may reject the use of lists, or substitutes therefor, which do not provide sufficient and accurate information.

To understand the purposes of article 4388, it is necessary to examine the statute in relation to the general role and duties of the State Treasurer. The office of Treasurer of the State of Texas is provided in the Texas Constitution as part of the executive department of state government. See Tex. Const. art. 3, § 49a; art. 4, §§ 1, 23. The Treasurer's duties are prescribed by law and generally involve the receipt, storage and disbursement of state funds. See V.T.C.S. arts. 4370-4393b. Article 4372 specifically requires the Treasurer to:

[K]eep true accounts of the receipts and expenditures of public moneys of the Treasury, and close his accounts annually on the 31st day of August, with the proper legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year.

Other statutes specifically impose similar requirements that the Treasurer maintain at all times an exact statement of the condition of the State Treasury for submission to the Governor or the Legislature. V.T.C.S. art. 4373. As a custodian of public funds, the Treasurer is subject to suspension, impeachment, or possible criminal prosecution if he cannot properly and accurately account for the public funds when and as required by law. See Tex. Const. art. 4, § 25; V.T.C.S. art. 5961; Penal Code art. 39.01.

It is our opinion that the requirement in article 4388 for submission to the Treasurer of a "detailed list" of persons remitting money is intended to assist the Treasurer in carrying out his duty as the custodian of those public funds covered by the article. As the court in Bullock v. Calvert, 480 S.W.2d 367, 372 (Tex. 1972) stated:

[E]very specific, permissible act of a public officer need not be expressed in a statute; we imply the authority to do those acts necessary to achieve the power or object expressly granted, because the Legislature must have intended to grant the constituent details within the larger commission.

Therefore insofar as the term "detailed list" as used in article 4388 lacks a statutory definition, it may be given a reasonable definition by the Treasurer for the purpose of achieving the object of the statute. We answer your questions together by indicating that insofar as the microfilm copies you describe do not efficiently provide the information necessary for proper maintenance of an accurate statement of the funds in question, they do not qualify as the "detailed list" prescribed by article 4388, and you, as State Treasurer, may require that the information submitted by each agency include those "details" regarding the remittance that are reasonably necessary for you to properly account for the funds. With respect to the form in which the information is submitted to the Treasurer, we note that article 4388 requires the department head to make the list and the Treasurer to receive it. We believe that the burden of organizing the information in reasonably usable form falls upon the department head, and that the Treasurer could require the information to be submitted in the form of the roll or register of items that is ordinarily signified by the word "list." Webster's Second International Dictionary at 1442 (1936).

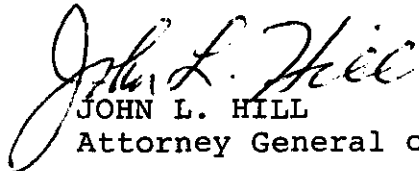
We conclude that you need not acquiesce in the use of lists or substitutes that do not provide in usable form the information necessary for you to account for the funds.

S U M M A R Y

The "detailed list" of persons remitting money of undetermined status which article 4388, V.T.C.S. requires department heads

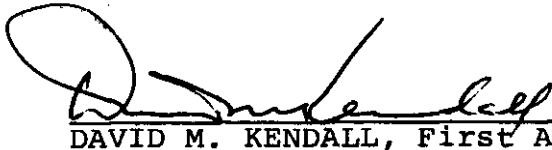
to submit to the State Treasurer must include the information necessary for the Treasurer to account for the accompanying remittances.

Very truly yours,



JOHN L. HILL
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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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